C.F. 71 & 72.

1933

Department of A. D. C. New

OFFICE 35 C. New.

STATION Adms.

No. 1733	
1733	
Dated 21-6-33	

on F. 1818/33.

To whom sent	Date	Initial
	Given for copying	
	Copied	
	Examined	
	Signed	
	Given for despatch	
	Despatched	
	Indexed	
Pages in the file	To be destroyed on*	

RECEIVED 22 JUN 1933

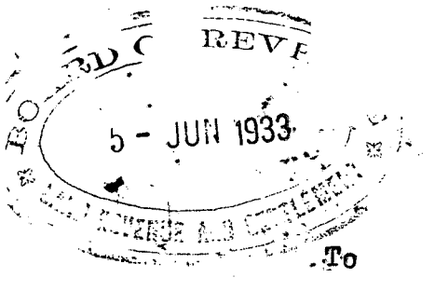
(SUBJECT.)

Smith — (P. Kamara) — Indigt. D.O.C. — (illegible) —
Sons — A. L. Acc — Prems encumbrance —
Sanctioned

* Not to be filled in in the case of permanent records.

OLP 79

Ref.A3-No.1971-33. South Kanara Collector's Office, F 18/
Mangalore, dated 29th May 1933.



E. M. Gawne, Esquire, I. C. S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue and Settlement,
Madras.

Sir,

Suits - (South Kanara) - Udipi - District Munsif's Court - O.S. 132/33 - Loans - Agriculturists' Loans Act - Previous encumbrance - defence - sanction applied for.

I enclose a copy of the plaint in the above suit, which is for a decree in favour of the plaintiff by the sale of the plaint property for the realisation of the amount of mortgage with interest thereon due to him from the 1st defendant free from the mortgages in favour of defendants 2 and 3.

2. The Government have been made a party in this suit (defendant 2), because of a loan of Rs. 300/- granted to the 1st defendant by the Special Tahsildar in charge of Loans work on 29-3-1924 for the purpose of enabling her to rebuild a house destroyed by the floods in the plaint property, S.No 18/4 of Tonse East village. The plaintiff's mortgage is of a date (18-11-1923) prior to the date of grant of the Government loan. As this loan was granted under the provisions of the Agriculturists' Loans Act, the plaintiff is entitled to claim priority over the Government loan. I, therefore recorded the suit notice sent to me by the plaintiff. The Government have simply to acquiesce in the plaintiffs' right and to claim a decree in their favour for the payment of the amounts due to them out of the surplus sale proceeds of the property. Out of the ten

instalments due, only the last is outstanding. The principal due is Rs. 35-8-8 on which interest runs at 4% per annum from 10-4-33. I enclose a draft written statement, claiming a decree for this amount and request that the Board may be pleased to sanction the defence of the suit and to approve the draft written statement. P.P. 7-8 m/s.

3. A copy of the plaint dated 5-4-33 was received by me along with summons on 15-4-33. The suit stands posted to 15-7-1933. I enclose the records noted in the margin for reference.

1. Collector's office file D.Dis.653/33. (7)
2. Udipi Taluk office file L.O.126/1333. (8)

Your obedient servant.

Collector.

In the Court of the District Munsiff of Udipi.

O.S.132/1933.

Between:

Ganiga Mutha ... Plaintiff

and

1. Nokke alias Shanthi Hengsu.

2. Secretary of State for India represented by the District Collector of South Kanara. ... Defendants.

3. P. Venkata Rao

(Plaint under section 26, Order VII, Rule 1 and Order 34, Rules 1 & 4)

The Plaintiff abovenamed begs to state as follows:-

I. That the Plaintiff Ganiga Mutha is the son of Ganiga Manjayya, Ganiga by caste and profession and residing in Nadubettu of East Tonse village of Udipi Taluk. ... Plaintiff.

N.B.- Processes on the Plaintiff may be served to the above.

II. That the 1st Defendant Nokke alias Shanthi Hengsu is the daughter of Ammu Hengsu, now protestant Christian by caste, residing in Kallianpur of East Tonse village, Udipi Taluk. 2nd Defendant is the Secretary of State for India represented by the District Collector of South Kanara, residing in Mangalore Town. 3rd Defendant P. Venkata Rao is the son of Raghuramapayya, retired post-master, residing in Kodavur village of Udipi Taluk. ... Defendants.

III. Subject-matter of the suit.

(1) Plaintiff is the mortgagee of the lands belonging to the Defendant.

(2) The following are the particulars of the plaint mortgage.

a. The plaint mortgage was executed on 18.11.1923.

b. Plaintiff is the mortgagee, and the 1st Defendant is the mortgagor.

c. Sum secured is Rs.300-0-0.

d. Rate of interest is 7½ per annum on the principal, payable at all rests. Arrears of interest carry interest at 12½ per annum till payment.

e. Properties subject to the plaint mortgage are described herebelow.

f. Amount now due to the Plaintiff is detailed herebelow.

(3) That the 1st Defendant has paid interest on the principal for the year ending on 17.11.1926 on 2.12.1928, but has failed to pay the interest due on the said principal from the commencement of 18.11.1926 till date, and also the intere on such arrears of interest, as well as the principal itself, which fell due on 18.11.1928 despite demands on that behalf. Hence suit by the Plaintiff

(4) Plaintiff learns and submits that the 1st Defendant has hypothecated the plaint properties to the 2nd Defendant for securing a loan, subsequent to the plaint mortgage. Plaintiff also learns and submits that the 3rd Defendant also holds a mortgage over the plaint properties subsequent to the plaint mortgage. Plaintiff submits that the mortgages in favour of the Defendants 2 & 3 being subsequent to the mortgage in favour of the Plaintiff, are neither valid nor binding upon the Plaintiff and he is entitled to have the plaint properties sold in satisfaction of the plaint dues free from the objections, if any, of the Defendants 2 & 3. Hence they are impleaded in this suit

(5) Plaintiff submits that notice contemplated under section 80 of the C.P.C. of 1908 has been given to the 2nd Defendant on 28-1-33, to which also there was no compliance.

(6) The cause of action for this suit arose on 18-11-27, 18-11-28, 18-11-29, 18-11-30, 18-11-31, 18-11-32 and also subsequently at East Thonse village, where the plaint properties are situate, within the jurisdiction of this court.

IV. The reliefs claimed in this suit are valued at Rs.485-11-0 for purposes of court fees and jurisdiction.

V. Plaintiff therefore prays for judgment and decree in his favour against the 1st Defendant personally and by sale of

the plaint properties free from the mortgages in favour of --- Defendants 2 and 3, for the following sums of money and costs of the suit and further interest on the aggregate at the contract rate:-

(1)	Principal sum due	Rs. 300- 0- 0
(2)	Interest on (1) at 7¼% p.a. due on 18-11-27	" 21-12- 0
(3)	Interest on (2) @ 12½% p.a. from 18-11-27 till date	" 14-10- 2
(4)	Interest on (1) at 7¼% p.a. due on 18-11-28	" 21-12- 0
(5)	Interest on (4) @ 12½% p.a. from 18-11-28 till date	" 11-14- 8
(6)	Interest on (1) at 7¼% p.a. due on 18-11-29	" 21-12- 0
(7)	Interest on (6) @ 12½% p.a. from 18-11-29 till date	" 9- 3- 2
(8)	Interest on (1) at 7¼% p.a. due on 18-11-30	" 21-12- 0
(9)	Interest on (8) @ 12½% p.a. from 18-11-30 till date	" 6- 7- 8
(10)	Interest on (1) at 7¼% p.a. from 18-11-30 till 18-11-31	" 21-12- 0
(11)	Interest on (10) @ 12½% p.a. from 18-11-31 till date	" 3-12- 2
(12)	Interest on (1) at 7¼% p.a. due on 18-11-32	" 21-12- 0
(13)	Interest on (12) @ 12½% p.a. from 18-11-32 till date	" 1- 0- 8
(14)	Interest on (1) at 7¼% p.a. from 18-11-32 till date	" 8- 2- 6
	Total	Rs. 485-11- 0

Dated 5-4-33 at Udipi.

Description of properties.

ಪ.ಶ.೦.ಹಿ. ಉಡುಪಿ ಪ.ಠಾಣೆ ಕೆಳಕಂಡ ಉಡುಪಿ ತಾ. ಮುಡು ಮೀನಿನ ಗ್ರಾಮದ ಪ.ನ. ೧೪/೪ ಚಾಗ್ವತ್ತ ಸೆಂಟ್ಸು ೨೬ ವಿಸ್ತೀರ್ಣದ ಕ.ಸ.೨-೦-೦ ಪೈಕಿಯ ಮೂಲ ಪಕ್ಕದ ಅಸ್ತಿ ಯ ಇಚರಣ್ಣಗಳು, ಹಾದಿ, ಮರಮುಟ್ಟು ವನ್ನೆಗೆ ಸಮಾನ್ಯ.

Verification: I, Ganiga Mutha, the Plaintiff herein do hereby declare that the facts stated above are true to my knowledge and information had and received.
Dated 5-4-33 at Udipi.

List of documents.

(1) 18-11-1923 Plaint mortgage bond executed by the 1st Defendant.

(2) 28-1-1933 Registered notice to the 2nd Defendant.

(3) 28-1-1933 Office copy of no.(2).

(4) 31-1-1933 Postal acknowledgment of the 2nd Defendant.

No.(2) to be got from the 2nd Defendant and no.(3) will be produced later on, at the trial.

(Sd.) x x x

Vakil for the Plaintiff.

(True Copy)

For Collector. 16-33

KNK
1.6.33

In the Court of the District Munsif of Udipi

O.S. No.132 of 1933.

Between:

Ganiga Mutha ... Plaintiff

and

Nekke alias Shanthi Hengsu and others. ... Defendants.

Written Statement of the Secretary of State for India in Council, represented by the Collector of South Kanara, 2nd defendant under Order VIII. Rule 1 of the Civil Procedure Code.

The 2nd defendant above named begs to state as follows:-

1. The address of the 2nd defendant is as stated in the plaint.

2. This defendant has no objection to the claim of the plaintiff as advanced in the plaint being allowed. He, however, submits that the plaint property was mortgaged by the 1st defendant to this defendant on 29-3-1924 for Rs. 300/- which was advanced by this defendant to the 1st defendant for the purpose of enabling her to rebuild a house destroyed by the floods in the said property under the Agriculturists' Loans Act and was repayable in ten annual instalments - the 1st of Rs. 37-6-2 and the next nine at Rs. 36-15-10 each.

3. Out of the ten instalments payable by the 1st defendant to this defendant under the terms of the mortgage or security bond dated 29-3-24, the first nine have already been realised by this defendant from the 1st defendant and the last one alone is outstanding. The amount still due to this defendant under principal is Rs. 35-8-8 on which interest runs at 4 per cent per annum from 10-4-1933 till date of payment.

4. This defendant denies the truth of the other allegations in the plaint not expressly traversed herein in so far as they are against this defendant.

5. This defendant, therefore prays that in the event of a decree being passed in the above suit, a decree may also be passed in favour of this defendant, providing for the payment

Date of hearing 15.7.33.

R. F. XXII-A-19—28,004—15-3-32 (6)

Subject.

FOR MEMBER. 13.

S

Bnlr - (S. Kanara) - Indisc. D.H.C - G.P. No. 182/33 - Loans - H.L. Act - Prior no encumbrance - Defence - Sanctioned

READ AGAIN B. P. No. _____, dated _____ 193

" " " _____, " _____ 193

READ ALSO :—

Register No. _____, From the F. 1818/33 G. No. _____, dated _____ 193

" " _____, " " _____, " _____, " _____ 193

" " _____, " _____, " _____, " _____ 193.

RESOLUTION. Mis. No. 1733 dated 21. 6. 1933.

The Board sanctions the defence of the suit and agrees to the draft written statement submitted by the Collr.

Issue
Mr
21-6-33

Dept
19-6-33
KV
1360

16/6.

SECY.
21 JUN 1933

X
M3.

17.6.33

15.6.33

O.N.

The Collr of S. Kanara with records.
Attached to
Letter B. 3. Nanjanagudi

16

The irregularity in having granted the loan when there was previous encumbrance and in excess of the amount asked for has been referred to in the O.N

at ~~date~~ 10-1-= ~~if~~ ; in CD 1's
file at (7) but as the Pub. was
who owned the car had -
~~He knows that~~
retired & no action was taken.

10-6-33.

IC4
13600